



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0904]

RIN 1625-AA87

Security Zone; Mare Island Dry Dock, Vallejo, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the navigable waters near Mare Island Dry Dock, approximately 100 yards from any part of the berthing piers in the Mare Island Strait, Vallejo, CA within the San Francisco Captain of the Port (COTP) zone. The security zone is necessary to protect the harbors, ports, and waterfront facilities during the dry dock period of the USS Frank Cable and associated APL berthing barge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector San Francisco.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until August 1, 2023. For the purposes of enforcement, actual notice will be used from November 2, 2022 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0904 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Anthony Solares, Sector San Francisco, U.S. Coast Guard; telephone 415-399-3585, email SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. The event will occur before the completion of a comment period, thereby jeopardizing the security of the harbors, ports, and waterfront facilities during dry dock period of the USS Frank Cable and associated APL berthing barge. We must establish this security zone by November 2, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest because immediate action is needed to provide for the security of the harbors, ports, and waterfront facilities, protection of high-ranking government officials, and mitigation of potential subversive acts.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33

U.S.C. 1231). The Captain of the Port Sector San Francisco (COTP) has determined that the USS Frank Cable and APL berthing barge will attend Mare Island Dry Dock for an extended period of time and a fixed security zone is necessary for the duration of the dry dock period. This area is located adjacent to U.S. navigable waters in the San Francisco COTP zone. This rule is needed to ensure the safety of the USS Frank Cable and APL berthing barge crew.

IV. Discussion of the Rule

This rule establishes a security zone from midnight on November 2, 2022 until midnight on August 1, 2023. The security zone will cover all navigable waters of the Mare Island Strait, from surface to bottom, within 100 yards from any part of the berthing piers in the Mare Island Strait. The duration of the zone is intended to protect the harbors, ports, and waterfront facilities during the dry dock period of the USS Frank Cable. No vessel or person will be permitted to enter the security zone except for authorized support vessels, aircraft, and support personnel, or other vessels authorized by the COTP or a designated representative.

A designated representative means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the Captain of the Port Sector San Francisco (COTP) in the enforcement of the security zone. The security zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

To seek permission to enter, contact the COTP or the COTP's designated representative by VHF Marine Radio channel 16 or through the 24-hour Command Center at telephone (415) 399-3547. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the security zone. Additionally, vessel traffic can pass safely around the area, and this rule allows to ask permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and

Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one

year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone established for the duration of the USS Frank Cable dry dock period in the navigable waters near Mare Island Dry Dock, approximately 100 yards from any part of the berthing piers in the Mare Island Strait, Vallejo, It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T11-116 to read as follows:

§ 165.T11-116 Security Zone; Mare Island Dry Dock, Vallejo, CA.

(a) *Location.* The following area is a security zone: all navigable waters of Mare Island Strait, Vallejo, CA within 100 yards of Mare Island Dry Dock berthing piers.

(b) *Definitions.* As used in this section, a *designated representative* means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector San Francisco (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The security zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) To seek permission to enter, contact the COTP or the COTP's designated representative by VHF Marine Radio channel 16 or through the 24-hour Command Center at telephone (415) 399-3547. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from midnight on November 2, 2022 through midnight on August 1, 2023.

Dated: November 1, 2022.

Taylor Q. Lam,
Captain, U.S. Coast Guard,
Captain of the Port Sector San Francisco.
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